

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) U03-0123.63	
	Application Number	Filed	
	10/708,018	February 3, 2004	
	First Named Inventor		
	Cherif Keramane		
	Art Unit 2624	Examiner Colin M. RaRose	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.


I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 42,282

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature

Frederick D. Bailey

Typed or printed name

919-286-8000

Telephone number

November 6, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed applicable form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/708,018 Confirmation No. 2017
Applicant : Cherif Keramane
Filed : February 3, 2004
TC/A.U. : 2624
Examiner : Colin M. LaRose
Docket No. : U03-0123.63
Customer No. : 54,494
For : System and Method for Image Background Removal
In Mobile Multi-Media Communications

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant submits that the Office Action issued by the Examiner in the present application contain clear errors in the Examiner's rejections of claims 1-3, 5-9, 11-15 and 17-21, pending in this application.

In the Office Action, the Examiner has rejected claims 1-18 under 35 U.S.C. § 103(a) as being patentable over U.S. Patent No. 6,593,955 (Falcon) in view of document WO 02/085018 (Jang et al.). Claims 19-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Falcon in view of Jang et al. and U.S. Patent No. 7,009,650 (Kashio). Applicant submits that the Examiner has committed clear error in rejecting the claims of the present application as being unpatentable over Pederson et al. and Kim.

Response to Arguments

In the Advisory Action dated October 23, 2007, in response to Applicant's arguments, the Examiner states that Applicant's amendment will be entered for purposes of Appeal but does not

place the application in condition for allowance. The Examiner then focuses on a single word “representation”, and goes into a discussion of a dictionary definition to justify his assertion that Falcon discloses the limitation in Applicant’s claims of “include a representation of the removed portion of the original image frame with the new image frame during wireless transmission of the new image frame so that it may be utilized by the receiver to improve the presentation of the received image frame by integrating it back into the received image frame” by Falcon’s disclosure of background replacement using monotonous data or a replacement image. However, the Examiner commits clear error for many reasons. The dictionary definition that the Examiner tries to use appears to relate to a person that represents another person (i.e., “one that represents” or “one that takes the place of”). The Examiner commits clear error.

Further, the Examiner focuses on one word and fails to view the claim limitation as a whole. The claim limitation recites “include a representation of the removed portion of the original image frame with the new image frame during wireless transmission of the new image frame so that it may be utilized by the receiver to improve the presentation of the received image frame by integrating it back into the received image frame.” The claims of the present application relate to removing a portion, transmitting it, and integrating it back after receipt to improve the presentation of the received image frame. In contrast, Falcon clearly relates to background replacement using monotonous data or a replacement image. The replacement disclosed in Falcon has nothing to do with the original image and is not a representation of a removed portion and does nothing to improve the presentation of the received image frame. The Examiner commits clear error.

35 U.S.C. §103 Rejections

Claims 1-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Falcon in view of Jang et al. Applicant respectfully traverses these rejections.

Regarding claims 1, 7 and 13, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of each of these claims of, *inter alia*, including a representation of the removed portion of the original image frame with the new image frame during wireless transmission of the new image frame so that it may be utilized by the receiver to improve the presentation of the received image frame by integrating it back into the received image frame, or an RF component

for wirelessly transmitting the encoded image frame and the representation of the removed portion of the original image frame. The Examiner commits clear error and fails to cite any portion of any of the references that discloses or suggests these limitations in the claims of the present application. In contrast, the Examiner without basis asserts that Falcon discloses these limitations and asserts “the monotonous color data substituted for the background is utilized as ‘a representation’ of the removed background portion and is transmitted with the encoded image and utilized by the receiver to reconstruct the image by integrating the monotonous color data with the foreground data.” Applicant submits that the Examiner commits clear error and uses impermissible hindsight in reading the limitations in the claims of the present application back into the cited reference. The assertions by the Examiner are neither supported nor suggested in Falcon. The Examiner provides no specific portion of Falcon (or Jang et al.) that discloses or suggests these assertions by the Examiner. Examiner commits clear error.

Moreover, Falcon discloses monotonous color data being used as a replacement for the background. Monotonous color data being utilized as a “representation” of removed background portion is not disclosed or suggested in Falcon (or Jang et al.), nor does it make any sense. According to the limitations in the claims of the present application a representation of the removed portion of the original image frame with the new image frame is included with the new image frame so that it may be utilized by the receiver to improve the presentation of the received image frame by integrating it back into the received image frame. The Examiner’s assertion of monotonous color data being utilized as a representation, even if integrated into the original image, does not represent the background portion removed from the original image and would not help a receiver improve presentation of the received image by integrating the replacement monotonous color data (“a representation” as asserted by the Examiner) into the original image. Monotonous color data integrated into the original merely produces the image, without representation of the original background, with the monotonous color data as disclosed in Falcon. Moreover, Jang et al. fails to disclose or suggest the limitations in the claims of the present invention. The Examiner commits clear error.

Regarding claims 2, 3, 5, 6, 8, 9, 11, 12, 14, 15, 17 and 18, Applicant submits that these claims are dependent on one of independent claims 1, 7 and 13 and, therefore, are patentable at least for the same reasons noted previously regarding these independent claims.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of each of claims 1-3, 5-9, 11-15 and 17 and 18 of the present application. Applicant respectfully requests that these rejections be withdrawn and that these claims be allowed.

Claims 19-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Falcon, Jang et al., and Kashio. Applicant respectfully traverses these rejections and submits that these claims are dependent on one of independent claims 1, 7 and 13 and, therefore, are patentable at least for the same reasons noted previously regarding these independent claims. Applicant submits that Kashio does not overcome the substantial defects noted previously regarding Falcon and Jang et al.

Accordingly, Applicant submits that neither Falcon, Jang et al. or Kashio, taken alone or in any proper combination, disclose suggest or render obvious the limitations in the combination of each of the claims of the present invention. The Examiner has committed clear error in making his rejections. Accordingly, as the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* obviousness rejection, for the reasons stated above, Applicant respectfully requests that the rejections of Applicant's claims in the present application be withdrawn and that these claims be allowed to issue.

Respectfully submitted,



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